

No. 14441

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,
vs.
HELEN CARVAJAL,
Appellee.

Transcript of Record

Appeal from the United States District Court for the Southern
District of California, Central Division

FILED
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PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

LAUGHLIN E. WATERS,
United States Attorney,

MAX F. DEUTZ,
JAMES R. DOOLEY,
Assistants U. S. Attorney,
600 Federal Building,
Los Angeles 12, California.

For Appellee:

RICHARD ALLAN WEISS,
903 Loew's State Building,
707 South Broadway,
Los Angeles 14, California.

In the United States District Court, Southern District of California, Central Division

Civil No. 15461-BH

UNITED STATES OF AMERICA, Plaintiff,

vs.

HELEN CARVAJAL, Defendant.

COMPLAINT FOR DAMAGES

The United States of America brings this suit against the above named defendant and alleges:

I.

This is a civil action brought to recover damages for violations by defendant of a price stabilization regulation issued pursuant to the Defense Production Act of 1950, as amended (50 U.S.C. App. Sec. 2061, et seq.). Jurisdiction of this suit is vested in this Court by Section 706(b) of the Defense Production Act of 1950, as amended [50 U.S.C. App. Sec. 2156(b)], and also by Section 1345, Title 28, United States Code.

II.

The defendant Helen Carvajal is, and at all times herein mentioned was, engaged in the business of reconditioning and selling used wooden agricultural containers under the trade name of Triangle Box & Crate Service, having her principal place of business at 475 South Fetterly Avenue, Los Angeles, California, which is within the territorial limits of the jurisdiction of this Court.

III.

On April 29, 1952, acting pursuant to the Defense Production Act of 1950, Executive Order 10161 (15 F.R. 6105), and Economic Stabilization Agency General Order No. 2 (16 F.R. 738), the Director of Price Stabilization issued Ceiling Price Regulation 142 (17 F.R. 3822), which became effective on May 5, 1952 and continued in full force and effect from said date to and including February 16, 1953.

IV.

Ceiling Price Regulation 142 established dollars and cents ceiling prices for certain sales of used wooden agricultural containers, including those mentioned in paragraph V hereof. At all times herein mentioned:

(a) Section 2 of this Regulation specified dollars and cents ceiling prices for each of the various kinds of agricultural containers including those sold in the sales and deliveries mentioned in paragraph V hereof.

(b) Section 10(a) of this Regulation prohibited the sale of any used wooden agricultural container at a price in excess of the ceiling price established therefor.

V.

During the period beginning May 5, 1952 and continuing to and including January 31, 1953, defendant sold and delivered certain used wooden agricultural containers at prices totalling \$832.21 in excess of the ceiling prices established by Ceiling Price Regulation 142. Said sales and deliveries are identi-

fied in Schedule A, which is attached hereto and made a part hereof, and which sets forth the quantity of each type of container sold during said period, the unit price charged and received therefor, the unit ceiling price applicable thereto, and the amount of the overcharges received by defendant in said sales and deliveries.

VI.

The purchasers of the containers sold and delivered in the sales and deliveries identified in Schedule A purchased the same in the course of their trade or business, but each of such sales and deliveries occurred more than 30 days prior to the filing of this complaint and none of such purchasers has filed a suit for damages arising out of any of said transactions. None of said sales or deliveries arose because defendant acted upon or in accordance with the written advice or instructions of the President of the United States, or any officer or employee authorized to act for him. None of said sales or deliveries arose out of the sale of any material or services to any agency of the Government pursuant to the lowest bid made in response to an invitation for competitive bids.

Wherefore, plaintiff prays for judgment against defendant Helen Carvajal, as follows:

1. For the sum of \$2,496.63, being treble the amount of the total overcharges made in the sales and deliveries mentioned in paragraph V hereof;
2. For reasonable attorney's fees and costs of litigation as determined by the Court;

3. For its court costs incurred herein; and
4. For such other and further relief as the Court may deem just and equitable.

WALTER S. BINNS,
United States Attorney
CLYDE C. DOWNING,
Assistant U. S. Attorney, Chief of
Civil Division

/s/ By ALDEN F. HOUCK,
Special Assistant to the United
States Attorney

SCHEDULE "A"

Type of Container Sold	No. of contain- ers sold during period	Selling price per container	Ceiling price per con- tainer**	Per con- tainer	Overcharge Total
Flat—Sanded	11,675	\$0.17	\$0.15	\$0.02	\$233.50
Lug—Sanded	19,714	.16	.15	.01	197.14
Lug—Sanded	12,331	.17	.15	.02	246.62
Celery	789	.16	.15	.01	7.89
Celery	230	.17	.15	.02	4.60
Celery	652	.18	.15	.03	19.56
Celery	421	.20	.15	.05	21.05
Celery-Delivered*	2,037	.22	.17	.05	101.85

Total Overcharges \$832.21

* These containers were sold "Delivered"; accordingly ceiling prices were adjusted to reflect a credit of 2c per container for this service.

** All containers were considered to be "Dealer Grade 1".

[Endorsed]: Filed May 1, 1953.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant, Helen Carvajal, and for answer to the complaint filed herein admits, denies and alleges as follows:

First Defense

The complaint fails to state a cause of action which entitles the plaintiff to any relief whatsoever.

Second Defense

For answer to paragraphs I, II and III of the complaint filed herein, the defendant admits the factual allegations therein contained.

Third Defense

For answer to the allegations contained in paragraph IV of the complaint filed herein the facts contained therein are neither admitted nor denied, but the defendant calls for strict proof thereof.

Fourth Defense

For answer to paragraph V of the complaint filed herein, the defendant denies that at any time that she sold and/or delivered certain used wooden agricultural containers at any price whatsoever in excess of the ceiling prices established by Ceiling Price Regulation 142. The remaining allegations of said paragraph are neither admitted nor denied, but the defendant calls for strict proof thereof.

Fifth Defense

The defendant has no knowledge or information sufficient to form a belief regarding the truth of the allegations of paragraph VI of the complaint filed herein.

Sixth Defense

Plaintiff has stated no facts entitling him to receive punitive damages and therefore, the plaintiff's requests for punitive damages should be stricken from the complaint.

Seventh Defense

That Ceiling Price Regulation 142 (17 F.R. 3822) does not apply to this defendant. That said Regulation applies only to "Dealers" and "Retailers". That this defendant is neither a "Dealer" nor a "Retailer".

Wherefore, the premises considered, the defendant demands that the complaint filed herein be dismissed with prejudice; and for such other and further relief as to the court may seem just and equitable.

/s/ RICHARD ALLAN WEISS,
Attorney for Defendant

Duly Verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 14, 1953.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

The above-entitled cause came on regularly for trial on the 5th day of April, 1954, before the Honorable Harry C. Westover, Judge presiding, sitting without a jury, a jury having been expressly waived, Laughlin E. Waters, United States Attorney, Max F. Deutz, Assistant United States Attorney and James R. Dooley, Assistant United States Attorney, by James R. Dooley appearing for the plaintiff, and Richard Allan Weiss appearing for the defendant, and evidence having been introduced by stipulations then and theretofore entered into by the parties through their respective counsel, and the cause having been submitted for decision on the 5th day of April, 1954, and being fully advised in the premises the Court now makes its Findings of Fact as follows:

I.

That the defendant was engaged in the business of reconditioning and selling used wooden agricultural containers under the trade name of Triangle Box and Crate Service, having her place of business at 475 South Fetterly Avenue, Los Angeles, California, which is within the territorial limits of the jurisdiction of this court.

II.

That the defendant bought all of her used agricul-

tural containers from persons who were and are dealers within the meaning of Section 12b of Ceiling Price Regulation 142.

III.

That under and by virtue of the authority vested in the President of the United States by the Defense Production Act of 1950, which authority was theretofore duly delegated by him to the Director of Price Stabilization, ceiling prices to be obtained by persons in the resale of used wooden agricultural containers, including the defendant, were fixed at the highest prices obtained by them during the period December 20, 1950, to January 19, 1951, as provided by the general ceiling price regulation.

IV.

That because of the seasonal variations of the fruit and vegetable business's ceiling prices, the said prices which became effective under general ceiling price regulation as referred to herein, were established during a period of few sales and proved to be inadequate for a large segment of the used container industry and particularly with respect to the prices obtained by the major items sold by the defendant.

V.

That by reason of the above-mentioned inequities, the defendant, together with others in the similar business, engaged attorneys and filed protests with the Office of Price Stabilization in Washington, D. C. That as a result thereof, the Office of Price Stabilization issued its certain order, known as

Order L-117, establishing dollar and cents maximum ceiling prices for those certain types of containers which are the principal commodities sold by the defendant. That from and after the issuance of said Order L-117, up to and including the 31st day of January, 1953, which period includes the time that all of the acts complained of as having been performed by the defendant herein, the defendant resold used wooden agricultural containers at a price not to exceed the ceiling prices referred to in said Order L-117 or in excess of the prices set by general ceiling prices regulation as to those commodities not affected by Order L-117.

VI.

That on or about April 29, 1952, the Office of Price Stabilization over the signature of the Director of Price Stabilization purported to promulgate that certain Ceiling Price Regulation No. 142, and prior to the promulgation of Ceiling Price Regulation No. 142, and prior to the dollar and cents ceiling prices for retailers and dealers as set forth therein, the said Director of the Office of Price Stabilization or his representatives made no attempt to, nor did they consult with the defendant or her predecessors in interest, or with any other person engaged in the resale of used wooden agricultural containers.

VII.

That after learning of the purported Ceiling Price Regulation No. 142, the Association of Used Agricultural Container Dealers and Sellers, of

which the Triangle Box and Crate Service was a member, held meetings with the duly authorized representatives of the Office of Price Stabilization at Los Angeles, California. That as a result of said meetings, the said Association informed the duly authorized representatives of the Office of Price Stabilization that they would and thereafter did continue to comply with the ceiling prices as established by the said Order L-117 and the General Ceiling Price Regulation. That the defendant followed the examples of the Association and that such acts of the Association and the defendant were open and notorious and known at all times to the said officials of the Office of Price Stabilization, who did not object thereto. That in so conducting her business, the defendant and the Association, and each of them, did so in reliance and belief that they were fully and adequately complying with the law and regulations applicable to such sales.

Conclusions of Law

That Ceiling Price Regulation No. 142 is void and of no force and effect whatsoever by reason of the fact that the said regulation is arbitrary and that no effort was made by the Office of Price Stabilization to comply with the provisions of Title 50 U.S.C. Appendix, Section 2104 in advising or consulting with the members of the Industry with respect thereto.

II.

That the President of the United States and those to whom he has delegated authority are estopped

from enforcing the provisions of purported Ceiling Price Regulation 142 by reason of the conduct and promises, expressed and implied, by said officials as aforesaid.

III.

That the defendant is not a dealer within the meaning of Section 12b of Ceiling Price Regulation 142.

IV.

That the plaintiff, United States of America, have and recover nothing by their suit.

Let judgment be entered accordingly.

Dated this 16th day of April, 1954.

/s/ HARRY C. WESTOVER,

Judge of the U. S. District Court

Affidavit of Service by Mail attached.

[Endorsed]: Lodged April 12, 1954.

[Endorsed]: Filed April 16, 1954.

In the United States District Court, Southern District of California, Central Division

Civil No. 15461-HW

UNITED STATES OF AMERICA, Plaintiff,

vs.

HELEN CARVAJAL,

Defendant.

JUDGMENT

The above-entitled cause came on regularly for trial on the 5th day of April, 1954, before the Honorable Harry C. Westover, Judge presiding, sitting

without a jury, a jury having been expressly waived, Laughlin E. Waters, United States Attorney, Max F. Deutz, Assistant United States Attorney and James R. Dooley, Assistant United States Attorney, by James R. Dooley appearing for the plaintiff, and Richard Allan Weiss appearing for the defendant, and evidence having been introduced by stipulations then and theretofore entered into by the parties through their respective counsel, and the cause having been submitted for decision on the 5th day of April, 1954, and the court having heretofore made and caused to be filed its written findings of fact and conclusions of law;

It Is Ordered, Adjudged and Decreed that the plaintiff, United States of America, have and recover nothing by their suit.

Dated this 16th day of April, 1954.

/s/ HARRY C. WESTOVER,

Judge of the U. S. District Court

Affidavit of Service by Mail attached.

[Endorsed]: Lodged April 12, 1954.

[Endorsed]: Entered and Filed April 16, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the United States of America, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth

Circuit from the final judgment entered in this action on April 16, 1954.

Dated April 28, 1954.

LAUGHLIN E. WATERS,

United States Attorney

MAX F. DEUTZ,

Assistant U. S. Attorney, Chief,

Civil Division

/s/ JAMES R. DOOLEY,

Assistant U. S. Attorney,

Attorneys for Plaintiff

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 28, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 45, inclusive, contain the original Complaint; Answer; Request for Admission; Objections to Request for Admission; Notice of Motion for Summary Judgment filed Feb. 16, 1954; Answer to Motion for Summary Judgment; Notice of Motion for Summary Judgment filed April 2, 1954; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Designation of Record on Appeal and Order Extending Time to

Docket Appeal and a full, true and correct copy of Minutes of the Court for March 1, 1954, and April 5, 1954, which together with Reporter's Transcript of Proceedings on February 11 and 12, 1954, and the original exhibits, transmitted herewith, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 19th day of July, 1954.

[Seal]

EDMUND L. SMITH,

Clerk

/s/ By THEODORE HOCKE,

Chief Deputy

[Endorsed]: No. 14441. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Helen Carvajal, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed July 20, 1954.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14441

UNITED STATES OF AMERICA, Appellant,

vs.

HELEN CARVAJAL, Appellee.

STATEMENT OF POINTS ON APPEAL

The appellant hereby designates the following points on appeal in the above entitled matter:

1. The District Court was without jurisdiction to declare Ceiling Price Regulation No. 142 void and of no force and effect.

2. The District Court erred in declaring Ceiling Price Regulation No. 142 void and of no force and effect for failure of the Office of Price Stabilization to comply with the provisions of 50 U.S.C. App. Sec. 2104.

3. The District Court erred in finding that the conduct of the officials of the Los Angeles Office of the Office of Price Stabilization estopped the President and those to whom he had delegated authority from enforcing Ceiling Price Regulation No. 142.

4. The District Court erred in finding that the defendant was not a dealer within the meaning of

Section 12(b) of Ceiling Price Regulation No. 142.

LAUGHLIN E. WATERS,
United States Attorney

MAX F. DEUTZ,
Assistant U. S. Attorney, Chief of
Civil Division

JAMES R. DOOLEY,
Assistant U. S. Attorney

/s/ JAMES R. DOOLEY,
Attorneys for Appellant

[Endorsed]: Filed September 15, 1954. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

DESIGNATION OF RECORD TO BE
PRINTED

Appellant above named hereby designates the following portions of the record to be printed in the above entitled matter:

1. Docket entries;
2. Complaint for Damages;
3. Answer;
4. Findings of Fact and Conclusions of Law;
5. Judgment;

6. Notice of Appeal;
7. Statement of Points on Appeal; and
8. Designation of Record to be Printed.

LAUGHLIN E. WATERS,
United States Attorney

MAX F. DEUTZ,
Assistant U. S. Attorney, Chief of
Civil Division

JAMES R. DOOLEY,
Assistant U. S. Attorney

/s/ JAMES R. DOOLEY,
Attorneys for Appellant

Affidavit of Service by Mail attached.

[Endorsed]: Filed September 15, 1954. Paul P.
O'Brien, Clerk.

